

Who Should Pay Environmental Clean-up Costs in the Case of Bankruptcy?

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Environmental pollution has been one of the most serious problems here in Japan as well as in many other countries around the world. Congress has therefore enacted various environmental laws to ensure the clean-up of contaminated sites and to allocate cleanup costs to private parties including owners of contaminated sites. However, when the owner goes bankrupt and cannot afford to pay these costs, immediate cleanup is almost impossible. Traditionally it has been discussed whether or not a trustee can abandon a contaminated property. Here the main issue was who should ultimately be responsible for the clean-up costs; unsecured creditors or government (taxpayers). Yet, recent commentators indicate that secured creditors could have a windfall regardless of whether unsecured creditors or the government pay the costs, because the value of collateral may go up after complete clean-up.

This paper examines who should be responsible for the environmental clean-up costs when an owner of a contaminated property goes bankrupt. The discussion focuses on whether or not secured creditors should pay all or some of these costs. A clue will be found through study of the U.S. environmental law (the Comprehensive Environmental Response, Compensation, and Liability Act) and bankruptcy code.